

JOHN F. CORCORAN, CLERK  
BY:   
DEPUTY CLERK

**Civil Action No. 7:07cv00097**

# MEMORANDUM OPINION

**By: Samuel G. Wilson**  
**United States District Judge**

## I.

Case 7:07-cv-00097-SGW-mfu Document 2 Filed 03/23/07 Page 1 of 3 Pageid#: 9

\$15,000. In setting the schedule of payments, the court, at the recommendation of the government at the sentencing hearing, ordered the \$15,000 fine to be paid in monthly payments equal to the amount of his monthly benefits (\$1,862.25) from the U.S. Railroad Retirement Board, or \$100 a month if those benefits ceased. At the hearing, Mills' counsel responded that there would be "no objection" to the court ordering the recommended payment schedule, and Mills did not appeal. Instead, it was not until over one year later that Mills first challenged the fine payment schedule. Mills does not dispute the fact that the court had authority to order him to pay the fine. Rather, Mills claims that the court exceeded its authority when it ordered him to pay his fine in installments equal to the amount he receives each month from his railroad retirement benefits. Mills claims that his railroad retirement funds should not have been considered in setting his fine payment schedule pursuant to 18 U.S.C. § 3613(a)(1) ( . . . a judgment imposing a fine may be enforced against all property rights to property of the person fined, except that – property exempt from levy for taxes pursuant to section 6334(a) . . . (6) . . . of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal Law") and 26 U.S.C. § 6334(a)(6) (exempting from levy annuity or pension payments under the Railroad Retirement Act).

## II.

As sovereign, the United States is immune from all suits against it absent express waiver of its immunity. United States v. Sherwood, 312 U.S. 584, 586 (1941). A waiver of sovereign must be explicit, United States v. King, 395 U.S. 1, 4 (1969), and all waivers of sovereign immunity must be "strictly construed . . . in favor of the sovereign," Lane v. Pena, 518 U.S. 187, 192 (1996). For that reason, it is the plaintiff's burden to show an unequivocal waiver of sovereign immunity. Williams v. United States, 50 F.3d 299, 304 (4th Cir. 1995). If plaintiff fails to meet this burden,

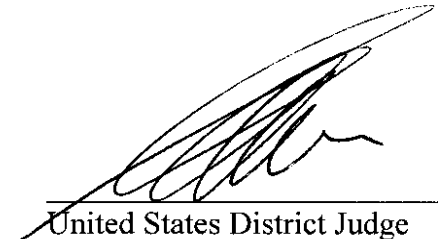
the court must dismiss the claim.<sup>2</sup> Medina v. United States, 259 F.3d 220, 223 (4th Cir. 2001). In this case, the court finds that the United States has not waived sovereign immunity so as to permit a monetary award and furthermore, any claim for prospective relief is now moot because, pursuant to the court's amended judgment entered February 2, 2007 which reduced his fine payment schedule to \$25 per month, Mills payments are based on his prison income. See Criminal Case No. 7:04cr00072, docket # 443. Moreover, even if Mills could show a waiver of sovereign immunity, his claim would still fail because Mills, through counsel, consented at sentencing to the fine payment schedule Mills now challenges. Accordingly, the court dismisses his action.

### III.

For the reasons stated, the court denies Mills' action for lack of jurisdiction and alternatively, because it lacks merit.

The Clerk of the Court is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the defendant.

**ENTER:** This March 22, 2007.

  
United States District Judge

---

<sup>2</sup> Because sovereign immunity advances a jurisdictional bar, the court may raise it sua sponte. Medina v. United States, 259 F.3d 220, 223 (4th Cir. 2001) (citing United States v. Bein, 214 F.3d 408, 412 (3d Cir. 2000)).